

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTHONY EUGENE LEWIS,

Plaintiff,

vs.

DEPARTMENT OF CORRECTIONS
STATE OF WASHINGTON, et al.,

Defendants.

NO. CV-09-5047-EFS

ORDER DENYING MOTIONS

BEFORE THE COURT are Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction (Ct. Rec. 4), Motion to Accord Liberal Reading and Construction thereto Applying any Appropriate Standards, Conclusions of Law or Relief Thereof (Ct. Rec. 6), Motion for Reference to Include Jurisdictional Statute and Authority under 42 U.S.C. § 1997 Civil Rights of Institutionalized Persons Act (Ct. Rec. 11), Motion for an Order to Allow Plaintiff Pro Se as an Indigent Inmate Unlimited and Unrestricted Indigent Legal Mail Postage Debt and Legal Photocopying Access to the Courts While a Prisoner of the Department of Corrections (Ct. Rec. 12), Motion for Permission to Serve a Supplemental Retaliation of Facts and Claims Concerning Plaintiff's Civil Rights Action Against a Conspiracy to Deprive Plaintiff of Various Constitutional Rights While a Prisoner (Ct. Rec. 14), and Motion for Default Judgment (Ct. Rec. 21).

Plaintiff did not properly note each of his motions for hearing as

1 required by LR 7.1(h), Local Rules for the Eastern District of
2 Washington. Because Plaintiff is proceeding *pro se*, the Court has noted
3 Plaintiff's motions on the date signed below. **PLAINTIFF IS CAUTIONED**
4 **THAT ANY FURTHER MOTIONS SUBMITTED TO THE COURT WITHOUT NOTING THEM FOR**
5 **HEARING IN COMPLIANCE WITH THE LOCAL RULES WILL NOT BE ADDRESSED BY THE**
6 **COURT.**

7 **MOTION FOR INJUNCTIVE RELIEF**

8 Plaintiff has filed a motion requesting injunctive relief. The
9 Court, however, has no jurisdiction to address Plaintiff's motion until
10 he has filed a legally sufficient complaint. See generally Fed. R. Civ.
11 P. 3 and the notes following the rule. Defendants are not parties to a
12 suit before being served with process, see *Neals v. Norwood*, 59 F.3d
13 530, 532 (5th Cir. 1995). Accordingly, **IT IS ORDERED** Plaintiff's
14 motion (**Ct. Rec. 4**) is **DENIED** with leave to renew.

15 **MOTION TO ACCORD LIBERAL READING**

16 Plaintiff has filed a one page motion inviting the Court to
17 liberally construe his complaint. As stated in the Order to Amend or
18 Voluntarily Dismiss, the Court has liberally construed Plaintiff's
19 complaint in the light most favorable to him. Therefore, **IT IS ORDERED**
20 Plaintiff's motion (**Ct. Rec. 6**) is **DENIED as moot.**

21 **MOTION FOR REFERENCE TO INCLUDE JURISDICTIONAL STATUTE**

22 Plaintiff filed a motion on June 22, 2009, seeking to incorporate
23 an additional statute. Plaintiff is advised that if he wishes to change
24 any of the information in his complaint, he must file an amended
25 complaint which functions as a complete substitute for, and not a mere
26 supplement to, the prior complaint. Because the Court has directed Mr.
27 Lewis to either amend his complaint or voluntarily dismiss this action,
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1 **IT IS ORDERED** Plaintiff's motion (**Ct. Rec. 11**) is **DENIED as moot.**

2 **MOTION REGARDING POSTAGE DEBT AND PHOTOCOPYING**

3 Plaintiff seeks an Order allowing him unlimited and unrestricted
4 indigent legal mail postage debt and access to photocopying. Plaintiff
5 wishes to exceed the weekly postal limit of \$9.60, and asks this Court
6 to override a Department of Corrections Policy which restricts legal
7 photocopies to documents challenging a current conviction or sentence,
8 or conditions of confinement.

9 Plaintiff has not alleged he has actually been denied access to the
10 court based on the legal mail and photocopy policies. He does not
11 assert a specific instance when he was actually denied access to the
12 court due to these limitations. See *Vandelft v. Moses*, 31 F.3d 794, 796
13 (9th Cir. 1994) (internal quotations omitted). Again, "the injury
14 requirement is not satisfied by just any type of frustrated legal
15 claim." *Lewis v. Casey*, 518 U.S. 343, 354 (1996). The claim must
16 involve a direct or collateral attack on the inmate's sentence or a
17 challenge to the conditions of confinement. *Id.*

18 Clearly, Plaintiff's request for unlimited access to postage and
19 photocopies for causes of action unrelated to his present conviction and
20 sentence or conditions of confinement is unwarranted. He does not
21 assert he has been denied all means of duplicating his legal materials,
22 including paper, a writing implement, and/or carbon paper. The Court
23 has not required Mr. Lewis to submit all U.S. Marshal 285 forms in a
24 single posting so as to exceed the weekly limitation. Indeed, in light
25 of the Order to Amend or Voluntarily Dismiss, Plaintiff may disregard
26 the directive from the District Court Executive, dated June 25, 2009, to
27 submit U.S. Marshal 285 forms for those Defendants named in his initial
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1 complaint. Therefore, **IT IS ORDERED** Plaintiff's motion (**Ct. Rec. 12**) is
2 **DENIED**.

3 **MOTION TO SERVE SUPPLEMENTAL PLEADING**

4 Plaintiff apparently seeks to supplement his pleadings by adding
5 claims against persons who were not Defendants to the initial complaint.
6 He claims he was infracted with a general infraction, rather than a
7 major infraction, for refusing to work after he had submitted his
8 complaint on June 10, 2009.

9 Plaintiff should be mindful that any claims which arose after he
10 initially submitted his complaint must be exhausted through the
11 appropriate administrative proceeding. *See McKinney v. Carey*, 311 F.3d
12 1198, 1199 (9th Cir. 2002) (Exhaustion must precede the filing of the
13 complaint and compliance with the statute is not achieved by satisfying
14 the exhaustion requirement during the course of an action.) He may then
15 file a separate cause of action for which he will be responsible for the
16 full filing fee. Therefore, **IT IS ORDERED** Plaintiff's motion (**Ct. Rec.**
17 **14**) is **DENIED** and the District Court Executive shall **STRIKE** from the
18 record Plaintiff's Supplemental Pleadings (**Ct. Rec. 16**).

19 **MOTION FOR DEFAULT JUDGMENT**

20 Finally, Plaintiff filed a Motion for Default Judgment on August 7,
21 2009. Contrary to Plaintiff's assertions, the Court has not directed
22 service on the named Defendants due to the deficiencies in Plaintiff's
23 complaint. Plaintiff has been directed to amend or voluntarily dismiss.
24 Accordingly, Plaintiff's motion is pre-mature. Therefore, **IT IS ORDERED**
25 the motion (**Ct. Rec. 21**) is **DENIED**.

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s/ Edward F. Shea
EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE

ORDER DENYING MOTIONS -- 5